



## **LIBRARY OF CONGRESS**

### **Copyright Office**

**[Docket No. 2011-1]**

### **Cable Statutory License: Specialty Station List**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of objections and specialty station filings.

**SUMMARY:** Periodically, the Copyright Office (“Office”) seeks to update its list of specialty stations related to the use of the cable compulsory license. In response to the publication of an initial list of specialty stations for this purpose in April of this year, the Office received objections filed by the Motion Picture Association of America to the identification of certain stations as being entitled to specialty station status in accordance with the Federal Communications Commission’s (“FCC”) definition of specialty station in effect on June 24, 1981. Consequently, before compiling the final list, the Office is providing an opportunity for response to the filed objections. The Office is also publishing for comment a new list of television stations reported in filed affidavits received after publication of the initial list in which the owner or licensee of the television station attests that the station qualifies as a specialty station under the FCC’s former rules.

**DATES:** Objections to the newly designated specialty stations must be filed no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Responses to any objections filed to the newly designated specialty stations must be received no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Responses to any of the MPAA objections noted herein must also be filed with the Office no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** All comments and reply comments shall be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at

<http://www.copyright.gov/docs/ssl>. The Web site interface requires submitters to complete a form

specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, all objections, comments, or other filings must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the filings. All objections, comments, and other filings will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of objections, comments, or other filings is not feasible, please contact Tracie Coleman of the Licensing Division at (202)–707–8150 for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Assistant General Counsel, and Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Under the cable statutory license, a cable operator may retransmit the signal of a distant television station identified as a specialty station at the base rate rather than at the higher 3.75% rate that is incurred for the carriage of a non-permitted signal. 37 CFR 256.2(c). Specialty station status is determined by reference to the former regulations of the FCC which defined a specialty station as “a commercial television broadcast station that generally carries foreign-language, religious, and/or automated programming in one-third of the hours of an average broadcast week and one-third of the weekly prime-time hours.” 47 CFR 76.5(kk) (1981). The specialty station designation was part of a complex regulatory structure which governed the carriage of distant network station signals in the 1970s. However, the FCC no longer determines whether a station qualifies as a specialty station. It repealed its distant signal carriage rules in 1981 and has not reviewed its specialty station policy since that

time. Nevertheless, the Office still keeps an active list because it is relevant to the calculation of royalties under Section 111.

The Office published its first specialty station list in 1990 under a procedure which allowed the owner of the station to file an affidavit with the Office attesting to the fact that the station's programming comports with the 1981 FCC definition, and hence, qualifies it as a specialty station. 55 FR 40021 (October 1, 1990). The Office noted at that time that it would periodically update the list.

Accordingly, on January 28, 2011, the Office published a Notice in the **Federal Register** asking the owner, or a valid agent of the owner, to file a sworn affidavit stating that the station's programming satisfies the FCC's former requirements for specialty station status. 76 FR 5213 (January 28, 2011). The Office received affidavits from 63 broadcast stations for which the owner or licensee of the television station had filed the requested affidavit. The Office then published an initial specialty station list in the **Federal Register** on April 22, 2011. 76 FR 22733 (April 22, 2011).

**Objections.** In the aforementioned Notice, the Office stated that any party objecting to any claim to specialty station status must submit comments with the Office stating his or her objections within thirty days of publication of this Notice in the **Federal Register**. The Motion Picture Association of America, Inc. ("MPAA") has made such a filing and objected to the inclusion of the following stations for the following reasons:

- **Stations offering full days of syndicated programming, including during prime time, cannot be identified as specialty stations:**  
WBQD-LP, Davenport, IA  
WYNA-CA, Albany, NY
- **Stations carrying the multicast signals of, and featuring the same programs as, a Public Broadcasting Service affiliate cannot be identified as specialty stations:**

K241C-D, Bellingham, WA: translator that carries multicast signals of Public Broadcasting

Service affiliate KBTC, Bellingham, WA to Vancouver, BC. K241C-D offers the same programs at the same times that they are broadcast by KBTC.

- **Stations offering home shopping programming throughout the day, and during prime time as well as stations solely broadcasting infomercials cannot be identified as specialty stations:**

KBCB-TV, Bellingham, WA: Home Shopping Network affiliated station.

KHTV-LP, Los Angeles, CA: Home Shopping Network affiliated station.

WNJJ-LD, Paterson, NJ: broadcasts only infomercials.

- **Stations currently licensed and silent cannot be identified as specialty stations:**

KDBK-LP, Caliente, CA

KEBK-LP, Bakersfield, CA

KFIQ-LP, Lubbock, TX

KILA-LP, Cherry Valley, CA.

KMRZ-LP, Moreno Valley, CA

KRMV-LP, Walnut, CA

KRPE-LP, Banning, CA

KRVD-LP, Banning, CA

KSCZ-LP, Greenfield, CA

KSGO-LP, Chico, CA

WXOX-LP, Cleveland, OH

- **ABC and Fox affiliates offering syndicated programming throughout the day in English should not be identified as specialty stations:**

WPRU-LP, Aguadilla, PR

WSJX-LP, Aguadilla, PR

WVXF(TV), Charlotte Amalie, USVI

- **Stations offering a radio programming format should not be identified as specialty stations:**

KFMP-LP, Lubbock, TX.

WLFM-LP, Chicago, IL

- **The following Port Jervis, NY licensed stations for which there is no evidence of construction or the type of programming broadcast should not be identified as specialty stations:**

W20CM

W26DB

W34d1

W42DQ

W49DK

W52DW

W59EA

Before compiling a new list of specialty stations, television broadcast stations that have filed affidavits attesting to their specialty station status should have the opportunity to rebut any objections filed to their identification as a specialty station and clarify their status for the purposes expressed herein. On this point, it should be noted that over twenty years ago, the Office implemented policies and procedures concerning notice to the public regarding specialty stations, the point of which was to provide all interested parties with a chance to comment on those stations claiming specialty status. The goal was to establish a set of facts so that cable systems can make an informed decision as to whether copyright owners might continue to contest the carriage of a particular station on a specialty basis. It was the Office's intention at that time that the notice, publication, and objection procedures would give all parties a chance to cooperate in their assessment of the specialty stations on the list. 54 FR 38461, 38464 (September 18, 1989). To that end, the Office contacted the representatives of stations for which it had received written objections and gave them an opportunity to respond. *See* 56 FR 61056 (November 29,

1991). Today, the Office is requesting written comments in response to the objections received from MPAA, which may be viewed at <http://www.copyright.gov/docs/specialtystations/objections-PS-2011.pdf>.

In addition to this notice, the Office will also contact each of the broadcast stations informing it that an objection has been filed to its representation that it is a specialty station and advising that it may respond to that objection. Responses from the broadcaster must be filed with the Office no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. A broadcaster that has determined that its station should not be considered as a specialty station at this time may inform the Office of this fact and the station will not be included on the final list. However, unless a broadcaster asks to be removed from the list of specialty stations, it will be included on the final list with an annotation to denote that an objection had been filed to the station's characterizing itself as a specialty station.

The Office will place in the public file together with the relevant affidavit any objection received and response thereto. With regard to the treatment of contested specialty stations after this proceeding concludes, it is important to note that the Licensing Division examiners will look at these stations in the same way they have done in the past. That is, if a cable operator claims specialty station status for a contested station on the list, the examiner will inform the operator by letter that a particular party objects to the "specialty characterization." *See* 54 FR 38461, 38464 (September 18, 1989). The cable operator then has the opportunity to file an amended Statement of Account and recalculate royalties, if the operator so chooses.

MPAA also contended that the Register has the authority to determine whether a particular station is properly identified as a specialty station. In its objection, MPAA referred to the standards set forth in 17 U.S.C. 411(b)(1) regarding the use of a registration certificate for purposes of filing an infringement suit, noting that the certificate of registration would not be valid for this purpose if the application contained inaccurate information which, "if known would have caused the Register of Copyrights to

refuse registration.” MPAA maintained that the same principle should apply in the case of specialty stations where the Office has accurate information to make a final determination as to whether a particular station should be characterized as a specialty station. The Office, however, has not made such determinations in the past and has stated that “it should not itself verify the specialty station status of particular stations,” 54 FR 38466 (September 18, 1989), although it has relied on rulings made by the Federal Communications Commission with respect to the retransmission of English-speaking stations in Puerto Rico. *See, e.g.*, letter from Marilyn Kretsinger, Assistant General Counsel, to Christopher Cinnamon on February 14, 1997. Rather, the Office provides periodically an updated annotated list so that “cable systems can make an informed decision as to whether MPAA or any other party might contest the system’s carriage of a particular station on a specialty basis.” 56 FR 61056 (November 29, 1991). These policies and practices do not support MPAA’s contention that the Office can make determinations regarding the specialty status of a particular station. Nevertheless, the Office seeks comment on MPAA’s contention that 17 U.S.C. 411(b)(1) provides authority for or is relevant to whether the Office can make a final determination on the classification of a broadcast station as a specialty station.

**New Specialty Station Claims.** Since the publication of the initial list, the Office has received 24 additional affidavits, attesting to the specialty station status of the 24 identified stations. Because the Office has received a substantial number of late filed affidavits, the Office finds it necessary to seek input from the public regarding the asserted specialty station status of these particular stations. Any interested party may file an objection to these newly listed stations. Such objections are due no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and [a list will be] will be posted on the Office’s website shortly after that deadline. The Office will also accept responses to these objections. Such responses are due [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. After comments or objections are received in response to this Notice, the Office plans to publish a final list of specialty stations that shall be effective January 1, 2012, for the accounting period 2012/1 and thereafter. The Office also notes that while the

current practice is to accept late filed affidavits after the publication of the final list, it will be reexamining this practice in an upcoming rulemaking proceeding.

**New List of Additional Specialty Stations: Call Letter and Cities of License**

KCGI-CA, Cape Girardeau, MO

KCSO-LD, Sacramento, CA

W07DP-D35, Harrisburg, PA

W14DFD-TV14, Ellitsburg, PA

W16COD-TV16, Middleburg, PA

W29CO-TV29, Sharon, PA

W45BT-TV45, Brookville, PA

W46EJ-D21, Clarksburg, WV

WAQP, Saginaw, MI

WBNF-CA, Buffalo, NY

WDWO-CA, Detroit, MI

WDYR-CA, Dyersburg, TN

WINM, Angola, IN

WKBS-TV47, Altoona, PA

WMBC-TV, Newton, NJ

WNYB, Jamestown, NY

WPCB-TV40, Greensburg, PA

WRAY-TV, Wilson, NC

WRLM, Canton, OH

WTCT-Marion, IL

WTLJ, Muskegon, MI

WXLI, Greensboro, NC



XERV-TV, Reynosa, Tamaulipas, Mexico

XHAB-TV, Matamoros, Tamaulipas, Mexico

**Dated:** November 2, 2011

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Maria A. Pallante,  
Register of Copyrights.

**[BILLING CODE: 1410-30-P]**

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